for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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EXTREME DUI

By Dan Lowrance
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Effective November 30, 1998, Arizona's newest DUI law goes into effect, creating an "Extreme DUI" offense for anyone with a blood or breath alcohol concentration of .18 or more within two hours of driving.

A.R.S. 28-1382 creates the crime of driving under the extreme influence of intoxicating liquor. The statute contains the same type of affirmative defense as the simple DUI statute. In this context, the affirmative defense provides that once the defense presents credible evidence that the alcohol concentration was below .18 at the time of driving, the state must prove beyond a reasonable doubt that the alcohol concentration was .18 or higher at the time of driving.

The Extreme DUI statute contains numerous sentencing enhancements from the .10 DUI offense. Most significantly, a person convicted of Extreme DUI will be sentenced to 30 days in jail. Twenty of these days can be suspended if a person successfully completes alcohol screening as well as any court-ordered education or treatment program. The remaining 10 days must be served consecutively. The financial penalty for this offense has also been enhanced to include an assessment of $250 in addition to the fine of $250, plus surcharges. This additional $250 goes to the newly established DUI abatement fund. As always, community service hours may also be tacked on as a term of sentencing.

A person convicted of Extreme DUI with any type of prior misdemeanor DUI conviction within the past 5 years must be sentenced to at least a mandatory minimum jail sentence of 120 days. Sixty days must be served consecutively, while the remaining 60 days can be suspended with successful completion of the screening and any court-ordered education or treatment program. The DUI abatement fund assessment of $250 is also added on to the base fine of $500, plus surcharges.

A pilot program has also been incorporated into the Extreme DUI statute whereby anyone convicted of this offense may be ordered to have a certified interlock device installed on their vehicle. This device must be installed for a minimum period of one year and would be a condition precedent to MVD's reinstatement of driving privileges. The offender is responsible for all attendant costs for this program including installation, maintenance and quarterly inspection fees. There may be some interesting Equal Protection issues with this program, as, during this first year, only 300 people convicted of Extreme DUI will be required to have these devices installed.

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The enactment of this new DUI legislation will certainly have a significant impact on the handling of DUI cases at justice court. Gone are the days when a breath test reading of .18 or .19 meant a certain resolution by plea. Now that the stakes have increased and a first-time DUI offender with a high alcohol concentration is looking at 10 days in jail, a $650 fine, surcharge and assessment, and the potential installation of an ignition interlock device, going to trial is going to be a more viable option in many cases. This is especially true where the facts will support any type of retrograde which gets the test result below .18 at the time of driving.

"The end result will be that the trial dockets will move along at a snail's pace as clients assert their right to a trial rather than roll over and accept without challenge the new more onerous penalties."

The financial and court scheduling impact of this new legislation can be appreciated when you consider the estimate of the Joint Legislative Budget Committee that 35% of the 43,040 DUI cases in the lower courts involved an alcohol concentration of .18 or greater. Consider this in light of the estimate that when 7% of DUI cases go to trial, it takes approximately nine months from arrest to disposition. The end result will be that the trial dockets will move along at a snail's pace as clients assert their right to a trial rather than roll over and accept without challenge the new more onerous penalties.

The trial scenarios in Extreme DUI cases are not hard to imagine. Whereas in the past, cases with .20 readings were pled out and never seen again, such readings will now be ripe fodder for a myriad of challenges. These challenges will range from the 10% accuracy limitation of the breath testing machine, to the tremendous variances between individuals in the rates of absorption and elimination. The viability of these challenges and defenses will also increase when you factor in the accepted principle that breath testing devices are less accurate as alcohol concentrations increase.

The line has been drawn in the sand. A $250 assessment, additional jail time, and the possible installation of an ignition interlock device are enhancements that are clearly defined in the difference between a .179 reading and a .180 reading. The legislation's delineation mandates that all defense counsel look at high reading DUI cases in a different light as clients are advised of their best course of action. ■

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HOW COME I CAN'T FILE A SUPPLEMENTAL BRIEF?

By Joel Glynn
Deputy Public Defender - Appeals

Should a juvenile be given a opportunity to file a *Supplemental Brief in Propria Persona*, when his/her appointed counsel on appeal files an opening brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S.Ct.1396, 18 L.Ed.2d 493 (1967) and asks the appellate court to allow the juvenile to file a supplemental brief? In my judgment, the answer is "Yes". Juveniles should be given the same opportunity as their adult criminal counter parts to file a supplemental brief, when appointed counsel 1) advises the appellate court that counsel has searched the record and found no arguable issue of law that is not frivolous, 2) asks the appellate court to search the record for fundamental error, and 3) files a *Motion for Leave to Allow Appellant [The Juvenile] to File a Supplemental Brief in Propria Persona*. Juveniles should receive the identical or substantial equivalent of the following general order that is issued by Division One of the Arizona Court of Appeals when appointed counsel makes a similar request for an adult client:

> It is ordered granting the motion of appellant's counsel to allow appellant to file a supplemental brief *in propria persona*.
>
> It is further ordered that appellant's counsel is directed to furnish to appellant a copy of the opening brief, together with a copy of all records on appeal, including transcripts which are now in

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> the possession of counsel. A copy of counsel's transmittal letter, specifying the documents being forwarded, shall be sent to the Clerk of this court and. . . [Appellee].
>
> It is further ordered that if appellant desires to file a supplemental brief raising additional points, he/she may do so on or before . . . .

Why? Let's examine the reasons.

Although a juvenile's first appeal in a delinquency case is a matter of right, *State v. Berlat*, 146 Ariz. 505,508, 707 P.2d 303,306 (1985), Division Two of the Court of Appeals held many years ago in *In re Appeal in Cochise County Juvenile Delinquency Action No. DL88-00037*, 164 Ariz. 417, 793 P.2d 570 (App.1990) that *Anders* does not require that a juvenile be given an opportunity to file a supplemental brief. Given the change in the law and juvenile appellate procedure since 1990, however, Division Two's unsolicited holding and application of *Anders v. California*, *supra,* to juvenile appeals is outdated and is no longer supported by the very factors cited in its opinion. Equal protection, due process, and fairness entitle a juvenile to file a supplemental brief *in propria persona*, when appointed counsel files an opening brief in compliance with *Anders v. California, supra*. Permitting a juvenile to file a supplemental brief in no way impinges upon the rehabilitative purposes of juvenile law but, in fact, promotes that recognized goal.

"Permitting a juvenile to file a supplemental brief in no way impinges upon the rehabilitative purposes of juvenile law but, in fact, promotes that recognized goal."

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution does not require that all persons be treated alike, only that individuals within a certain class be treated equally and that there exist reasonable grounds for the classification. In *re Appeal in Maricopa County Juvenile Action No. J-*72804, 18 Ariz. App. 560, 504 P.2d 501 (1973); *Rinaldi v. Yeager*, 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed2d 577 (1966); *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 755, 13 L.Ed.2d 675 (1965). The court in In *re Appeal in Maricopa County Juvenile Action No. J-72804* recognized in 1973 that "the purpose of the juvenile appellate rules is to expedite and facilitate the handling of juvenile appeals." 18 Ariz. App. at 565, 504 P.2d at 506. However, statutory juvenile law, case law, appellate procedure, and circumstances have significantly changed since 1973, not to mention since 1990.

The requirement of former Rule 25(b), Rules of Procedure for the Juvenile Court [RPJC] that the juvenile/appellant file a Statement of Grounds for the Appeal and Memorandum of Authorities formerly led Division One of the Court of Appeals to hold that juvenile appeals pursuant to *Anders v. California* were unauthorized and subject to automatic dismissal. See, *In re Appeal in Maricopa County Juvenile Action No. J-84536-S*, 126 Ariz. 546, 617 P.2d 54 (App. 1979). Division One later overruled in *In re Appeal in Maricopa Juvenile Action No. J-117258*, 163 Ariz. 484, 788 P.2d 1235 (App. 1989) and held that its previous interpretation that RPJC 25(b) prohibited a juvenile from filing an *Anders* appeal violated the juvenile's Fourteenth Amendment right to equal protection.

The general rule regarding the applicability of the Rules of Criminal Procedure to juvenile proceedings has also evolved. Granted, our Arizona Rules of Criminal Procedure are generally inapplicable to juvenile proceedings, because juvenile proceedings are not strictly criminal in nature. *In re Appeal in Maricopa County Juvenile Action No. JV-508488*, 185 Ariz. 295, 915 P.2d 1250 (App. 1996). However:

> Arizona courts have not hesitated to apply the criminal rules to juvenile proceedings when appropriate to protect a juvenile's constitutional rights. See, e.g., State ex.rel. *Dandoy v. Superior Court,* 127 Ariz. 184, 187, 619 P.2d 12, 15 (1980)(applying criminal Rule 11 determination of mental competency to juvenile proceedings); *Maricopa County JV-114857*, 177 Ariz. 337,338, 868 P.2d 350,351 (App.1993)(criminal rule regarding dismissal with prejudice applicable in juvenile case); *JV-111701 v. Superior Court*, 163 Ariz. 147,150-52, 786 P.2d 998, 1001-03(App.1989)(criminal Rule 4 applies to require a prompt initial appearance); *Pima County Juv. No.J-77027-1*, 139 Ariz.446, 449-50, 679 P.2d 92,95-96 (App.1984)(criminal Rule 11.7 applies to protect juvenile's privilege against self-incrimination when mental exam is ordered); *In re Anonymous, Juv. No. 6358-4,* 14 Ariz. App. 466, 484 P.2d 235(1971)(applying case law from adult preliminary hearing to juvenile transfer hearing); *Maricopa County Juv. No. J-*

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> *72804*, 8 Ariz. App.560,564, 504 P.2d 501,505 (1972)(applying adult standards for guilty pleas in juvenile courts); *Pima County Juv. No.J-47735-1*, 26 Ariz. App. 46,48, 546 P.2d 23,25 (1976)(analogy between preliminary hearing under adult criminal rules and first stage of juvenile transfer hearing warrants allowing hearsay to establish probable cause). . . . *Pinal County Juv. No. J-169*, 131 Ariz. 187, 189, 639 P.2d 377, 379 (App. 1981)(judicial interpretations of criminal Rule 27.2 regarding probation modifications 'provide useful guidance in determining the requirements of due process in a juvenile setting.'). . .

Id., 185 Ariz. at 299-300, 915 P.2d at 1254-1255.

The procedures involving the prosecution of juveniles in juvenile court and in the criminal division of superior court have also changed since 1973. When the voters of the State of Arizona passed Proposition 102 on November 5, 1996, they voted to substantially change the relationship between juveniles charged with breaking the law and the superior court. Former Article VI, § 15 of the Arizona Constitution, which granted exclusive jurisdiction in all matters effecting delinquent children and which required judges to hold hearings in advance of any criminal prosecution of such children, was repealed. Its replacement, new Article VI, § 15, rearranged the jurisdiction and authority of the courts and granted it jurisdiction only "as provided by the legislature or the people by initiative or referendum."

"The consequences of an adjudication of delinquency in juvenile court now closely parallel those of a successful criminal prosecution of a juvenile in adult court."

The people of Arizona voted to allow criminal prosecution in the criminal division of superior court ("adult court") for 15, 16, and 17 year-old juveniles who commit murder, forcible sexual assault or armed robbery. Although this provision required criminal prosecution of juveniles who were "violent offenders" or "chronic offenders," these terms were left undefined. However, that section of the state constitution also provided that "[all] other juveniles accused of unlawful conduct shall be prosecuted as provided by law." These amendments became effective on December 6, 1996.

Senate Bill 1446, the enabling legislation for Proposition 102, became effective on July 21, 1997. The new law defined the terms "violent offenders" and "chronic offenders" and enacted "the law" under which juveniles must be prosecuted. Consequently, portions of A.R.S. 8-241 and 13-501 were added to this legislation.

A.R.S. 8-241(V)(1) defines a "first time felony juvenile offender" as "a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult." A "repeat felony juvenile offender" is a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult and has been previously been adjudicated a "first time juvenile offender." A.R.S. 8-241(V)(2). If the juvenile is fourteen years or older and is adjudicated as a "repeat felony juvenile offender," the juvenile court must place the juvenile on Juvenile Intensive Probation or commit the juvenile to a juvenile detention center or the Department of Juvenile Corrections for a significant period of time. A.R.S. 8-241(D). Additionally, the juvenile court must provide the following written notice to a "repeat felony juvenile offender":

> You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for a subsequent offense that would be a felony offense if committed by an adult and if you commit the subsequent offense when you are fifteen years of age or older, you will be tried as an adult in the adult court. If you are convicted, you will be sentenced to a period of incarceration.

See, A.R.S. 8-241(E).

A.R.S. 13-501(F)(2) defines a "chronic felony offender" as a juvenile who on at least two prior occasions has been adjudicated delinquent for conduct that would constitute a historical prior felony if the juvenile had been tried as an adult. The State must initiate a criminal prosecution against the juvenile in the same manner as an adult if the juvenile is fifteen, sixteen, or seventeen years of age, is a "chronic felony offender," and is accused of any felony offense. A.R.S. 13-501(A)(6). Under A.R.S. 13-501(B)(5), the State may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fourteen years of age, is a chronic felony offender, and is accused of any felony offense.

The consequences of an adjudication of delinquency in juvenile court now closely parallel those of a successful criminal prosecution of a juvenile in adult court. Now, unlike 1973, juveniles adjudicated delinquent of certain sexual offenses must submit to DNA testing,

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registration as sexual offenders, and may be required to submit to HIV-blood testing. See, A.R.S. 13-4438, 31-281, 13-3821(c), and 8-241(N). Consequently, an improper adjudication may impact a juvenile well into adult life. See, *In re Appeal in Maricopa County Juvenile Action No. JV-117258*, 163 Ariz. 484,487, 788 P.2d 1235,1238 (App. 1990).

These significant changes should now entitle a juvenile to participate in his/her appeal by filing a supplemental brief *in propria persona*, if appellate counsel files an opening brief in compliance with *Anders v. California*.

Appellate procedure in juvenile cases has also substantially changed since 1973 and 1990. Former RPJC 25(b) required appellant to file a *Statement of Grounds and Memorandum of Points and Authorities* within 15 days after the final order. The *Statement of Grounds for the Appeal* was filed without the benefit of a transcript of the juvenile court proceedings. This obviously promoted the goal of the juvenile appellate procedure at the time, which was to expedite and facilitate the handling of juvenile appeals. (See, *In re Appeal in Maricopa County Juvenile Action No. J-72804, supra*). This procedure substantially changed on June 1, 1996. Effective June 1, 1996, the juvenile-appellant was required to file a *Notice of Appeal* within 15 days after the final order was filed (usually the disposition order) and file *Designation of Transcript* and *Designation of Record* forms within 5 days after the filing of the *Notice of Appeal*. (See, former RPJC 25(a)[1] and (e); RPJC 26(a)[2]). Transcripts of the designated record and the minutes, instruments, and pleadings were to be filed with the clerk within 30 days. (See, RPJC 25(c)). Now, the clerk of the Court of Appeals issues a notice that the record is complete and advises appellant to file an opening brief within 20 days of the Court's dated order. RPJC 27(b), amended January 1, 1998. Appellate proceedings are now protracted. Proposition 102, its companion legislation, and the amendments to Rules 24 through 29 of the Arizona Rules of Procedure for the Juvenile Court (effective June 1,1996 and January 1, 1998) have spread the time within which juvenile appeals can be processed. Gone are the days when the Statement of Grounds for the Appeal and Memorandum were to be filed within 15 days after a disposition hearing and without the benefit of transcripts. Conceivably, the opening brief can now be filed a total of 65 days (15 + 30 + 20) from the date that the "final order" is signed by the judicial officer and filed by the clerk. This does not include the additional time to file an answering brief (20 days) and a Reply Brief (10 days). RPJC 27(b)(2) and (3).

Recent case law and a new change in the Rules of Procedure of the Juvenile Court have occasioned further delay in the time to appeal an adjudication order or a disposition imposed on a juvenile. Now, if there is an issue of restitution, the restitution order becomes the "final order" for purposes of RPJC 25(a), because the order denominated "disposition" is interlocutory in nature when restitution remains an unresolved issue. *In re Eric L.*, 241 Ariz. Adv. Rep. 8 (CA 1, 4/17/97). Consequently, when the issue of restitution remains an open question and/or a hearing on the issue of restitution is set on a future date, the final order for purposes of RPJC 25(a) is the restitution order. Therefore, no appeal can be taken until the restitution order has been signed by the judicial officer and filed by clerk. Due to calendar congestion, however, a restitution hearing could take place 30 to 60 days after the disposition hearing. Adding the extra time for preparing, signing, and filing the minute entry, it is easy to see that this whole process takes longer than it did in 1973, 1979, 1990, and 1996.

Currently, appellate counsel cannot ignore the existing, but out-dated, holding in *In re Appeal in Cochise County Juvenile Delinquency Action No. DL 88-00037, supra*. There, Division Two of the Arizona Court of Appeals held that *Anders* does not require that a juvenile be given an opportunity to file a supplemental brief. (See, also Arizona Appellate Handbook, Vol. One, Third.Ed., 6.7.1.2.2,pp. 6-10). Division Two's unsolicited discussion of this issue and holding was based on the following premise:

> The purpose of permitting an adult defendant to file a supplemental brief is to permit him 'to raise any points he chooses' in furtherance of his appeal. Id. This presupposes a level of maturity and sophistication which a juvenile *presumptively* lacks. Moreover, the resulting delay in the appellate process undermines the goal of expeditious review of juvenile cases in light of the juvenile court's limited jurisdiction over the minor. [Emphasis added].

164 Ariz. at 420, 793 P.2d at 572.

The predicate for Division Two's holding is no longer contemporary or justified by the current state of affairs. The current appellate process is now protracted, resulting in a compromise of the former goal of expeditious review of juvenile cases. *Anders v. California, supra*, requires that "a copy of counsel's brief should be furnished to the indigent and time allowed him to raise any point that he chooses;. . . ." 386 U.S. at 742, 87 S.Ct. at 1400. Given the change and evolution of juvenile appellate procedure, the rehabilitative goal of juvenile court will not be impinged by allowing a juvenile to file a supplemental brief *in propria persona* if appellate counsel files an

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opening brief in compliance with *Anders v. California, supra*. The juvenile court's limited jurisdiction over a minor will not be impinged, when a stay order is not sought. The juvenile's "presumptive" lack of maturity and sophistication is dispelled by the new legislation which focuses on a juvenile's age and offense and which permits the State to file criminal charges against a juvenile directly in superior court (adult court). See, A.R.S. 13-501(A)(6) and 13-501(B)(5).

An Equal Protection analysis also supports a juvenile's entitlement to file a supplemental brief *in propria persona*, if appellate counsel files an "Anders Brief. There are three tests to determine the constitutionality of a statute under an equal protection analysis. *In re Appeal in Maricopa County Juvenile Action No. JV-117258*, 163 Ariz. 484, 487, 788 P.2d 1235, 1238. One such test is the "rational basis" test. The "rational basis" test is not met if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. 163 Ariz. at 487, 788 P.2d at 1238. As that court stated:

> The state, in its post-adjudication role, has a duty to preserve and promote the interest of the juveniles. The *Anders* appeal, by assuring that no fundamental error occurred during the adjudication, furthers the state's interest.
>
> Affording a juvenile an *Anders* appeal in no way impinges upon the rehabilitative purposes of juvenile law. Indeed, given the fact that adults are entitled to an *Anders* appeal, we can think of no reason as to why juveniles should not be entitled to the same."

163 Ariz. at 487, 788 P.2d at 1238.

Likewise, given the fact that adults are entitled to file a Supplemental Brief in Propria Persona, one can think of no reason why a juvenile should not be able to do the same. There is no longer any rational basis to put the juvenile in a separate category and preclude the juvenile from filing a supplemental brief. It is important to remember that "*Anders* is based upon an equal protection analysis. Indigents are to be given the same right to fair process--the same 'opportunities on appeal'--as those 'who are able to afford' to retain counsel." (Citation omitted). *State v. Shattuck*, 140 Ariz. 582, 586, 684 P.2d 154, 158 (1984).

"The juvenile's 'presumptive' lack of maturity and sophistication is dispelled by the new legislation which focuses on a juveniles age and offense and which permits the State to file criminal charges against a juvenile directly in superior court (adult court)."

Speaking of *Shattuck, supra*, it is noteworthy that Division One of the Arizona Court of Appeals currently applies the same principle announced in *State v. Shattuck, supra*, to juvenile appeals. In *Anders* cases, Division One currently enters the identical or substantial equivalent of the following order in juvenile cases after affirming the order of adjudication and the disposition imposed:

> Upon the filing of this decision, counsel's obligations pertaining to the juvenile's representation in this appeal have ended. Counsel shall inform the juvenile of the status of the appeal and the juvenile's future options. Counsel has no further obligations, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*. 140 Ariz. 582, 684 P.2d 154 (1984). It is ordered that the juvenile have thirty days from the date of this decision to proceed, if desired, with a *pro per* petition for review. Rules 28(a) and 29(b), Arizona Rules of Procedure for the Juvenile Court, effective June 1, 1996.

Surely, this language recognizes the evolution of juvenile appellate procedure and the maturity and sophistication of juveniles in today's society. If this is not the case, then providing a juvenile with a thirty-day period to file a *pro per* petition for review pursuant to *State v. Shattuck, supra*, is a charade. I'm sure that the Court does not intend that perception. If a juvenile is sufficiently mature and sophisticated to file a *pro per* petition for review to the Arizona Supreme Court, the same level of maturity and sophistication exists during those brief months that precede the filing date of the Court of Appeals' opinion/memorandum decision.

Since Arizona voters passed Proposition 102, 15 year-old's convicted of certain offenses can now be prosecuted as adults in superior court. This can be accomplished by the county attorney filing a direct complaint in the adult division of superior court. If that occurs and the juvenile is later found guilty and sentenced as an adult, he/she would be given an opportunity to file a supplemental brief *in propria persona*, if appellate counsel filed an opening brief in compliance with *Anders V. California, Supra,* and a *Companion Motion for Leave to Allow Appellant to File a Supplemental Brief in Propria Persona.*

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What difference would there be in "maturity" or "sophistication" between that defendant and a 15-year old who was prosecuted in juvenile court? There isn't any.

You may be now be asking yourself, "How do I reconcile all of this with Division Two's holding in *In re Appeal in Cochise County Juvenile Delinquency Action No. DL 88-00037, supra*, and the adoptive language that appears in the *Arizona Appellate Handbook*? The message to appellate counsel in the *Arizona Appellate Handbook*, Vol. One, Third Ed., 6.7.1.2.2, p 6-10 is:

> Similarly, Division One will routinely deny a motion filed by counsel for a juvenile *Anders* appellant seeking an order forwarding a copy of the record on appeal to the appellant to enable him or her to file a supplemental brief.

Remember, Division Two concluded that juveniles "presumptively lack" the maturity and sophistication to file a supplemental brief. *In re Appeal in Cochise County Juvenile Delinquency Action No. DL88-00037,* 164 Ariz. at 420, 793 P.2d at 572. To successfully address this language and secure an order from the Court of Appeals allowing 1) you to amend your "Anders Brief" with the juvenile's additional points that he/she chooses to raise in furtherance of his/her appeal or 2) your juvenile client to file a supplemental brief *in propria persona*; I suggest that you file a *Motion to Supplement Appellant's Opening Brief with Appellant's Supplemental Brief in Propria Persona*. In the motion, refer to the juvenile's age (e.g., the juvenile is 16 or 17 years old) and the circumstances in the record that rebut the juvenile's "presumptive lack" of maturity and sophistication. Attach a copy of the juvenile's proposed supplemental brief to your motion and argue that the juvenile's writing style, reference(s) to the record and legal argument(s) dispels his/her "presumptive lack" of maturity and sophistication and therefore entitle the juvenile to have his/her supplemental brief considered by the appellate court. That is what I did and Division One of the Arizona Court of Appeals granted my motion over the State's objection. ■

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1. RPJC 25(a) was amended, effective January 1, 1998, to provide that the Notice of Appeal was to be filed *no later* than 15 days after the "final order" was filed by the Clerk.

2. The 1998 amendments to the Rules of Procedure for the Juvenile Court eliminated the requirement that appellant file Designation of Transcript.

THE VISUAL DETECTION OF DWI MOTORISTS

By C. Daniel Carrion
Supervisor - DUI Unit

The National Highway Traffic Safety Administration (NHTSA) has just issued an update of the classic *Detection of Drunken Drivers at Nighttime*, DOT-HS-805-711, Second Edition, January 1982, called *Detection of DWI Motorists*, DOT-HS-808-677. The pamphlet can be downloaded in HTML or PDF format at the web site http://www.nhtsa.dot/enforcement. The PDF format is preferable.

Four categories are listed for identifying driving behaviors to detect motorists who are likely to be driving impaired: (1)problems in maintaining proper lane position, (2) speed and braking problems, (3) vigilance problems, and (4) judgment problems.

The pamphlet includes 24 driving cues that may indicate impairment. The four new cues are: (1) slow or failure to respond to officer's signal, (2) stopping inappropriately in response to an officer, (3) inappropriate or unusual behavior, and (4) improper or unsafe lane change. Cue 12 of the older version, tires on center or lane marker, has been omitted.

The first 3 cues are suspect. For example, NHTSA gives the following illustration for failure to respond: "Similarly, an impaired driver might be unusually slow to respond to an officer's lights, siren, or hand signals." The Visual Detection of DWI Motorists, at 11. What constitutes unusually slow? This type of information is meaningless as any reasonable person would know that response time is dependent upon the traffic volume, the location, and numerous other factors attendant in the particular circumstances.

The only example given for stopping inappropriately in response to an officer is: "In some cases, impaired drivers stop inappropriately in response to an officer, either abruptly as if they had been startled, or in an illegal or dangerous manner." Id at 12. This is a very subjective standard which permits the police officer to cast any innocent conduct as suspicious and indicative of driving impairment.

This lack of precise definition or specific conduct of the cues illustrates the most glaring difference between the two versions. You should use both versions of the pamphlets for descriptions of the cues in order to pin the police officer to an more "objective" description of the driving.

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The third cue, inappropriate or unusual behavior, describes ordinary acts such as "throwing something from the vehicle, drinking in the vehicle, urinating at the roadside, arguing with another motorist, or otherwise being disorderly." Id at 12. For those of you who throw cigarette butts from the car or drink coffee in the car, brush up on your alphabet and be prepared to walk a line. Then again, these examples, with the exception of urinating at the roadside,(which should not be considered a driving cue), can be used to show that even ordinary conduct is suspect to well-trained DWI patrol officers.

The last cue of impairment is not really new. Most of the driving cues listed are all some form of improper or unsafe lane change.

The pamphlet reflects the political correctness of NHTSA. The words "accident" and "drunk" are not mentioned in the pamphlet. NHTSA has decreed from this date onward, that the term "accident" will not be used to describe a traffic collision. (See Pamela Anikeef's, "Crashes Aren't Accidents" Campaign, NHTSA Now-Volume 3, No.11, August 11, 1997). The reason for this policy is that the term "accident" connotes unavoidable collisions or uncontrolled events. The proper word for this brave new world is "crash." It connotes control, avoidable, and someone at fault. All NHTSA materials published after 1997 will use the terms "crash," "collision," "incident," and "injury" rather than "accident."

The removal of the term "drunk" from the traffic safety lexicon actually benefits those accused of DWI. For years, prosecutors have argued that the state does not have to prove that the person is drunk, but merely impaired. One drawing in both pamphlets illustrates a truth: impairment and drunk mean the same thing in the context of traffic safety. In 1979, a person who appeared drunk was a sign of impairment. In 1998, a person who appeared impaired is a sign of impairment. Nothing has changed in twenty years other than the preferred term.

Appearing to be Drunk(then)

Appearing to be Impaired(now)

The prosecutors have persuaded the courts that the term "drunk" connotes a higher degree of impairment and that the jury should be told that drunk does not equal impairment to the slightest degree. The position of the criminalist hired by the government has been that a person is impaired to the slightest degree at a blood alcohol concentration of 0.08. The pamphlet states that this cue is valid for BAC of 0.08 or greater. Therefore, the term "drunk" should be avoided since it tends to confuse the prosecutors and the courts.

Another change in the new version is the use of 0.08 BAC as the standard in estimating the probability for impairment. Any of these cues are supposed to reflect an impairment of 0.08 or greater BAC in at least 35% of the drivers. In the eighties and the nineties, NHTSA has been pushing the states to adopt 0.08 as the per se impairment. Of course, Arizona maintains 0.10 BAC as the per se impairment. It is interesting to note that NHTSA is funding a field study in Tucson this summer to validate standardized field sobriety tests at 0.08.

In the 1982 pamphlet, NHTSA gave probability of impairment for each cue from most likely to least likely for BAC of .10 and for BAC of .05. Whether the values are calculated for 0.05, 0.08, or 0.10 BAC, do not permit the state to use the values in trial. In the 1982 introduction, NHTSA warned against use of the values in court:

> The National Highway Traffic Safety Administration does not endorse the use of numerical value given a visual cue when testifying in court. These numerical values, although accurate, are provided primarily to emphasize the importance of a particular cue.

A more significant change is that the cues are no longer limited to nighttime driving. These new cues are allegedly good indicators for daytime or nighttime driving. In the past, the state has attempted to limit the impeachment value of the guide by arguing that the guide

(cont. on pg. 9) ☞

is limited to nighttime driving. This argument has been compromised by the fact that nineteen of the twenty cues are part of the new 24 cues. The "failure to turn on headlights" cue has been modified to be used as the only nighttime indicator in the new pamphlet.

The pamphlet also includes post-stop cues. These cues are particularly useful when your client does not exhibit any of cues during the investigative stop. Often police officers will testify that they are not looking for the client fumbling through his wallet, difficulty exiting the car, or possible symptoms of impairment. Now you can direct the officers through all of the cues that were not present. Be aware, however, that the odor of alcohol is now listed as a cue. That cue should be discounted as it is merely a sign of recent ingestion rather than a symptom of alcohol intoxication.

The list of post-stop cues are:

(1) difficulty with motor vehicle controls,
(2) difficulty exiting the vehicle,
(3) fumbling with driver's license or registration,
(4) repeating questions or comments,
(5) swaying, unsteady, or balance problems,
(6) leaning on the vehicle or other object,
(7) slurred speech,
(8) slow to respond to officer/officer must repeat questions,
(9) provides incorrect information or changes answers, and
(10) odor of alcoholic beverage from the driver.

"Even if a client exhibits some of these cues, remember that many of the cues are consistent with fatigue. NHTSA sidesteps any comparisons by stating that fatigue is not well understood, even though it is the second leading cause of traffic fatalities after alcohol."

Even if a client exhibits some of these cues, remember that many of the cues are consistent with fatigue. This is especially relevant given that most of our clients are stopped late at night. NHTSA sidesteps any comparisons by stating that fatigue is not well understood, even though it is the second leading cause of traffic fatalities after alcohol. (Drowsy Driving and Automobile Crashes, NCSDR/NHTSA Expert Panel on Driver Fatigue and Sleepiness.) It is known that "drowsy related crashes occur predominantly after midnight." Id. The fatigue related impairments are: 1) slower reaction time, 2) reduced vigilance, and 3) deficits in information processing. Id.

In summary, the new guide should be used in conjunction with old guide to illustrate those driving and exiting cues that were not observed by the officers. Of course, if your client exhibited a large number of cues, do not use the guides to reinforce the state's position.

DWI DETECTION GUIDE

Problems Maintaining Proper Lane Position

1. Weaving
2. Weaving across lane lines
3. Straddling a lane line
4. Swerving
5. Turning with a wide radius
6. Drifting
7. Almost striking a vehicle or other object

Speed and Braking Problems

8. Stopping problems (too far, too short, or too jerky)
9. Accelerating or decelerating for no apparent reason
10. Varying speed
11. Slow speed (10+ mph under limit)

Vigilance Problems

12. Driving in opposing lanes or wrong way on one-way
13. Slow response to traffic signals
14. Slow or failure to respond to officer's signals
15. Stopping in lane for no apparent reason
16. Driving without headlights at night
17. Failure to signal or signal inconsistent with action

Judgment Problems

18. Following too closely
19. Improper or unsafe lane change
20. Illegal or improper turn (Too fast, jerky, sharp, etc.)
21. Driving on other than the designated roadway
22. Stopping inappropriately in response to officer
23. Inappropriate or unusual behavior (throwing, arguing, etc.)
24. Appearing to be impaired ■

NEW RELEASE OPPORTUNITIES: Pretrial Services' Electronic Monitoring

By Terry Bublik
Trial Group Counsel - Group B

Pretrial Services now has the capability to monitor your client on release by way of an electronic bracelet. This is accomplished by fitting the individual with an electronic monitoring device that is worn like a bracelet around the ankle. Another monitoring device is then placed in the individual's residence and is hooked up to their telephone. This system allows the monitoring agency to be immediately notified or "paged" anytime the individual enters or leaves their residence. These

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monitoring devices are extremely sophisticated and will automatically notify the monitoring agency if the bracelet is tampered with or removed. During an electronically supervised release, the individual may not remove the bracelet for any reason. The monitoring system will also be notified when the residential device is tampered with, unplugged or if there is a loss of power. In the event of a power failure, a backup system in the device will activate.

The real issue, however, is whether or not your client is a good candidate for this type of monitoring. There are several things to consider. First, you must verify that the client has a working telephone in his home. A cell phone does not meet this requirement; neither does call forwarding. In addition, the client is required to pay for this service at rate of $180 per month ($6 per day). This amount must be paid in full prior to the start of each month of service.

"Once you have determined that your client is a good candidate for electronic monitoring, you must specifically request it in your release motion."

Finally, as with all release motions, you must determine the likelihood that this type of release will be granted. What type of charges are involved? Does the client have any prior failures to appear? Are there other things which would make you believe that your client may be a flight risk?

Once you have determined that your client is a good candidate for electronic monitoring, you must specifically request it in your release motion. If the judge grants your request for electronic monitoring, the court will set forth specific and strict terms of release. For example, the court could authorize specific times when your client may leave his residence. If this is allowed, your client is on a very short leash. If the client does not come home on time or leaves when he is not authorized to do so, he will be in violation of the terms and conditions of his release, and the monitoring agency will be immediately notified. Additionally, the court may order other conditions of release; i.e. drug testing, field visits or curfew checks. In some cases, the court will decide that your client may not leave his home at all. This order is strictly enforced. On this type of release, the client cannot go over to the neighbor's's house or even out to his own backyard. If he goes beyond the four walls of his residence, a supervising officer will be notified immediately. Keep in mind that these supervising officers keep track of your client much in the same way that probationers on intensive probation supervision are monitored.

Before requesting this type of monitoring, it is important for you to thoroughly discuss it with your client, so he is aware of what will be expected of him. There are no jailhouse bars to keep your client locked inside his residence. Your client must have enough self-discipline to comply with the strict terms of his release. If you have a juvenile client, it is important to discuss this program with his parents as well. If there is any chance that your client cannot abide by the conditions set by the court, this may not be the right program.

The good news is that funding will soon be available to cover the costs of this program for clients who are not able to pay the $180 a month service fee. According to Perry Mitchell, Chief Pretrial Officer, for the first year of funding, there will be only fifty devices available for indigent clients. However, fifty more devices will be added each year for a total of 150 devices by the third year of funding. This will be in addition to those clients who can self-pay for the cost of the program.

Pretrial Services will also receive additional funds in the near future to provide actual "treatment" services on a limited basis. This would allow the PTS treatment provider to arrange assessments, counseling and mental health treatment for our clients *while* they are being supervised by Pretrial Services.

Pretrial Services is currently monitoring two individuals with the electronic monitoring system. With the anticipated funding, we expect these numbers to increase. Let's hope the program is a success. It may provide some of our clients with an opportunity to keep their lives together while awaiting the outcome of their case. ■

A TISKET- A-TASKET AN OVERFLOWING "IN" BASKET

By Noble Murphy
Deputy Public Defender - Group C

Do you ever sit in your office surrounded by notes and messages and think to yourself "What is it I need to be doing at this moment?" I'm sure it doesn't take you long to think of what to do, but the real question isn't "are you busy all the time?" but rather "are you attacking tasks efficiently?" For those of you who forget to do things, I have a suggestion - use your GroupWise calendar task list.

It allows for the organization of tasks in a manner superior to traditional methods. This will result in a net gain of peace of mind. Disorganization results in a constant battle to put out fires. Better organization will keep them from starting in the first place.

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Why should you use the GroupWise Task List?

It allows you to go beyond your normal memory abilities. But there is much more it can do as far as organization that you personally can't do in the same amount of time. Why is this better than post-it notes, a legal pad, or tickle file?

The answer is "prioritization, tracking and better reminding." Can your legal pad tell you, before you have scanned it, what comes next? Can your post-it notes reappear periodically to remind you to complete certain tasks? Can the note cards in your tickle file re-sort themselves whenever a new task is entered or when you decide something is more important now than when assigned?

The GroupWise Task list does all of the above things, and also provides a record for the completion of tasks.

"The priority structure is yours to create, though once you do, I recommend you adhere to it. It is important that you design a priority system that works for you."

No longer will you say "did I do that?" With a push of a button you are able to look back at what you have done and when you completed it. Every time you finish a task you point and click with the mouse and then it no longer carries over to the next day. It's like crumbling up and throwing away a post-it or scratching an item off your "things to do list," but it records when you do it.

What do I do First?

You must first create a priority system on a piece of paper that you will stick to. The priority structure is yours to create, though once you do, I recommend you adhere to it. It is important that you design a priority system that works for you. Don't skip this step. Mine begins like this:

1. Urgent Tasks
2. Semi-Urgent Tasks
3. Work to be done
4. Work eventually to be done
5. Materials to obtain for work
6. Organizational things
7. Personal etc....

A-Z Letters for case interviews and discovery

How do I assign a task?

1) Go into the GroupWise calendar (by double clicking on the calendar in the GroupWise main menu).
2) Double click on the open area in the task list (if the task list is full go to the bottom).
3) A "personal task list" screen pops up. It asks you to name a "subject" and assign a "priority level." You can also describe the task. Only the subject and priority are visible. (Personally, I don't use the description much because the subject for me is descriptive).
4) After you have typed in a subject, tab once to the priority box in the upper right hand corner, you then assign the task a priority level. Next, click on the "OK" button and the task list reappears with the new item entered and sorted automatically by priority.

The item will be in black, meaning that it was assigned on that day. If it isn't completed, it will appear tomorrow and the next day and the next until you finally click in the little box to the left of the particular task. After this box is clicked, the task will not appear on the next day's task list. Then if you are having doubts as to whether or not you did something, you can search back and see if it was completed and, if so, when it was completed.

Future Tasks

These work just the same as the above task list. The only thing you need to do is change the "start date" and "due on" date on the task box when you are done assigning a priority. Or you can double click on the calendar day itself and make the assignment on the task list of the day in the future. For example, two months from now when your task list appears the task that you place on it to start reminding you in two months will start to appear on your task list in the appropriate place. Can your post-it notes disappear until the time they're need to trigger your memory?

Case Discovery

I assign a letter designation in the "priority box" when it appears a case is going to trial (note if you assign a letter it will go below all numbers in priority). Next, I figure out all the potential witnesses I might need to interview and list for example, as A1, A2, A3 etc... My task list might look like this for a case:

- ☐ A <u>Discovery/Interviews JONES</u>
- ☐ A1 Officer Miller
- ☐ A2 Officer Smith
- ☐ A3 Jason Shell (Eye witness #2)
- ☐ A4 Hanson (Blood Expert)
- ☐ A5 MVD pack

When an item is completed, you click on the box and then it will not carry forward to the next day.

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I have found that interviews and other crucial discovery items are best assigned within my task list to remind me to keep bugging the county attorney that, "I still have not gotten that [item] which you said you would get me" or "I still need to interview . . . . "

Reoccurring Tasks or Appointments

Appointments, if you use your calendar, can be made to pop up at the designated times without having to enter them more than once. Examples of these tasks or appointments are: "turn in closed files," "file notice of defenses," "justice court day," "court coverage day," "clean my office" . . . .

So the next time you are wondering "what do I need to do next?", take all your post-it notes and pads of paper with things to do and create your own GroupWise task list. Then glance at your task list and start at the top. Your worries will be less and the fires will be gone. ■

INVESTIGATOR'S CORNER

By Curtis E. Yarbrough
Lead Investigator - Group A

This debut article proudly features the senior investigator in the Investigation Division, Edward Yue. Eddie is currently assigned to Durango Juvenile and has been an investigator with our office since 1965. Needless to say, Eddie has seen many changes to the Office and especially to the Investigation Division. Currently, there are twenty-five investigators, a far cry from the original four interviewers and one investigator in 1965. When asked what has kept him here all of these years, Eddie replied, "I just enjoy helping the indigent and the challenge of each case."

During his investigative career, Eddie has had many case victories and successes. One memorable interview he conducted was with a client who was appealing a conviction for kidnapping and rape. Little did Eddie know that this client interview was with an individual whose name would be etched into the annals of case law history. That appellant was none other than Ernest Miranda.

"Little did Eddie know that this client interview was with an individual whose name would be etched into the annals of case law history. That appellant was none other than Ernest Miranda."

Eddie was born and raised in Phoenix. He attended North High School, Phoenix College and received a Bachelors of Science Degree in Sociology from Arizona State University. Eddie served in the United States Army and was assigned to the Medical Corp. In 1995, Eddie was widowed after a thirty year union with Sharon, a fun loving, straight to the point, gregarious and sweet lady. That union produced two children and three grandchildren. Eddie resides in Northeast Phoenix and has many interests and hobbies. He is the past president of the Chinese American Citizens Alliance and currently holds the office of Marshall on the national board of that organization. Eddie is an avid hunter and looks forward to receiving his annual permit from the Arizona Department of Fish and Game to hunt elk and deer. He also wears a ring which indicates he bowled a "300" game in April of 1996. Eddie says his favorite sport is golf and his utmost pleasure is always beating Bob Guzik.

I have personal knowledge of Eddie's persistence. While attending a National Defender Investigator Association conference in Chicago, Eddie tried for three days to get me to go with him and search the city for a White Castle hamburger restaurant. Seems as though all of them were located in the worst part of Chicago near notorious housing projects. I have been in many situations which required bravery or foolishness but this is one time Eddie's persistence did not win out. Four years later Eddie still says, "We should have gotten those hamburgers. We could have taken on any danger, you were a L.A. cop. What's the matter, are you chicken?" I simply replied, "Yes."

Professionally, Eddie's pet peeve is anyone who doesn't take interest in his or her case and just goes through the motions without caring. Eddie sees a bright future for investigators, especially with the introduction of computers and the internet. Although he has served the office for over thirty-two years, he has quite a few more he would like to give. Eddie Yue is just one of the wonderful personalities that make up the Investigation Division. Look for the next issue of *for The Defense* and the Investigators Corner when another investigator will be featured along with more noteworthy tips.

NOTEWORTHY TIPS

- Each investigator is now able to obtain *Kelly Blue Book* vehicle values from his/her own personal computer. This will aid the attorneys with cases while covering justice court, and take the load off one or two individuals checking the books.
- No investigator in this office can legally obtain a criminal history from NCIC data banks. We can only obtain criminal history from adjudicated cases that originate in Maricopa County which are filed at the clerk's office.

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- Always try to verify priors, especially class 6's. Don't assume the priors are usable. Some agencies think an arrest on a rap sheet means a conviction. Ask the agency alleging the priors for a case number, date of conviction or sentencing court.
- Our office is a member of the National Defender Investigator Association (NDIA). We have direct liaison with almost every Public Defender Office in the United States, Puerto Rico and other territorial jurisdictions. We hold a national conference and a regional meeting each year. The NDIA website is (www.ndia-inv.org).
- Our personnel has a combined wealth of knowledge that is beneficial to all. Remember to SHARE it. Your personal knowledge is minuscule, but combined with others, it is enormous. ■

ARIZONA ADVANCE REPORTS

By Steve Collins
Deputy Public Defender - Appeals

***In re Harry B.*, 272 Ariz. Adv. Rep. 6 (CA 1, 6/23/98)**

The trial judge's failure to ask a pleading defendant if any promises had been made, does not render a plea involuntary. At the disposition hearing, the trial judge apparently was willing to alter the conditions of probation only if the juvenile's mother or counsel could persuade the absent probation officer to change his recommendations. The Court of Appeals stated a trial judge should not merely "rubber-stamp" the recommendation of the probation officer. It was held to be improper to delegate decision-making to a probation officer.

***State v. Harvey*, 273 Ariz. Adv. Rep. 14 (CA 1, 7/2/98)**

Under A.R.S. § 13-702(C)(2), the use of a deadly weapon may not be an aggravating factor if the use of the deadly weapon also resulted in enhancement under A.R.S. § 13-604 because of dangerousness. If a finding of dangerousness for enhancement is based only on serious physical injury, the use of a deadly weapon may be an aggravating factor.

Defendant was charged with murder, but the jury returned a verdict only for negligent homicide. The Court of Appeals held the trial judge could aggravate the sentence based on the judge's conclusion defendant actually committed the greater offenses.

The trial judge aggravated the sentence because the victim was an "innocent bystander." Defendant argued this was improper because the victim of a "negligent" homicide is always an "innocent bystander". The Court of Appeals disagreed.

***State v. Harrison*, 273 Ariz. Adv. Rep. 53 (CA 1, 7/16/98)**

Defendant was charged with aggravated assault on a police officer. Prior to the assault, while in the squad car, defendant stated if he had a gun, the officer would be bleeding in a nearby parking lot. It was held this statement was admissible to show state of mind. Defendant claimed the police were the aggressors and he had acted in self-defense. The statement was found to be relevant to establish who was the actual aggressor.

Defendant's prior aggravated assault conviction was admitted under Rule 609 for impeachment. In closing argument, the prosecutor stated, "When you decide whether to believe who was the aggressor, you take into consideration the fact that he was convicted of aggravated assault." The Court of Appeals found the statement "arguably urged the jury to consider the prior aggravated assault conviction for an improper purpose: namely, to show defendant's propensity to commit assault." In this case, it was held to be harmless error.

Defendant was given aggravated sentences for the aggravated assault conviction and an unlawful flight conviction. The case was remanded for resentencing because the trial judge failed to articulate aggravating factors to justify the sentences imposed.

Defendant's unlawful flight could not be an aggravating factor for the aggravated assault conviction as it happened before the assault. The fact defendant "fled from the police," does not constitute a finding that defendant's flight exceeded the level necessary to support the flight charge.

The dissenting judge would not have remanded for resentencing, because it was a "manifestly lenient sentence." The trial judge gave aggravated but concurrent sentences rather than harsher presumptive sentences running consecutively. Therefore, the dissenting judge felt the failure to state aggravating factors was harmless error.

***State v. Rodriguez*, 273 Ariz. Adv. Rep. 28 (SC, 7/14/98)**

It was reversible error for the trial judge to refuse to give an instruction on alibi. "A party is entitled to an instruction on any theory reasonable supported by the evidence." Here the requested alibi instruction was not a comment on the evidence. Further, the general instructions were insufficient because they may have led jurors to believe the defendant had the burden of proving an alibi defense. The record included substantial support that the prosecutor failed to comply with the discovery provisions of Rule 15 as to reports by a fingerprint expert.

(cont. on pg. 14) ☞

The Arizona Supreme Court stated, "we emphasize that the responsibilities of the prosecutor go beyond the duty to convict defendants." "Pursuant to its role of 'minister of justice' the prosecution has a duty to see that defendants receive a fair trial."

State v. Garza, **273 Ariz. Adv. Rep. 32 (SC, 7/14/98)**

In imposing consecutive sentences, the trial judge stated he relied on the "presumption" of consecutive sentences contained in A.R.S. § 13-708. The Arizona Supreme Court held that § 13-708 does not create a presumption but rather only provides a default designation when a trial judge fails to specify if sentences are concurrent or consecutive.

The trial judge must impose the sentence he or she feels is appropriate. § 13-708 "does not diminish a judge's discretion to choose between concurrent and consecutive sentences." Therefore, it was improper to give a sentence the judge stated he felt was excessive.

Merrick v. Lewis, **273 Ariz. Adv. Rep. 7 (SC, 7/2/98)**

A.R.S. § 41-1604.10 allowing inmates to earn release credits applies to crimes committed before its effective date. Court order forfeiting five days for bringing a frivolous lawsuit was upheld. ■

BULLETIN BOARD

New Attorneys
Two additions to the new attorney class on August 10 are:

Monyette Dunlap-Green most recently worked as a law clerk for Judge Barbara Mundell of Mesa. She received her J.D. from A.S.U. College of Law. She also holds an M.B.A. from Southern Illinois University in addition to her B.A. in Liberal Arts and Sciences from Bradley University.

Stephen Wall graduated from Hamline University School of Law in St. Paul, Minnesota. While in law school, he participated in the International Law Program at the Moscow State University of Law in Moscow, Russia. His undergraduate degree in Political Science is from the University of California, San Diego. Stephen was working for Michael Terribile and Marty Lieberman, at the time of his hiring.

Attorney Moves/Changes
Curtis Beckman transferred from Group D to Mental Health on August 17.

Troy Landry left the office on August 7 for private practice. Troy had been a member of Group B since 1993.

Tim Mackey, Group C, left the office on August 14 for private practice.

New Support Staff
Four new student attorneys will be joining Dan Lowrance this fall. They are:

Joanne Cuccia will graduate from ASU College of Law in May, 1999. She holds a B.S. in Justice Studies from ASU. She has worked as the Assistant Project Director for the Homeless Legal Assistance Program and was a member of the Women's Law School Association.

Bill Faye will graduate in December, 1998. He was the Senior Editor for the A.B.A. Journal of Law Science and Technology, Jurimetrics. He holds a B.S. in Civil Engineering from ASU, as well as his Master's from the University of Wisconsin. He is an Andre House volunteer.

Denise McKelvie will graduate in May, 1999. While in law school, she participated in the Chicanos/Latinos Law Student Association. She received her B.A. in English from ASU.

Jerry Morgan received his B.A. in Business Administration from the University of Texas-Austin. During law school he participated in the Homeless Legal Assistance Program. He will graduate in May, 1999.

Patty Winter was hired as a Clerk for Group C, effective July 27.

Support Staff Moves/Changes
Christine Bono, Records Clerk - SEF, left the office on August 24.

Julie Born, Administrative Receptionist, and **Matthew Elm**, Group A Trainee, left the office on August 14 to return to school. Good luck this year!

Velia Ceballos, Lead Secretary for Group D, left the office on August 21. Velia has provided secretarial support since 1988. She will continue her career as a legal secretary in private practice.

Armida Herrera, Litigation Assistant in Group A, leaves the office effective August 28. She will be a paralegal at a private law firm.

Crecia Mathalia left the office on August 10. She was a legal secretary in Appeals and will be relocating to California.

Ronnie Pealatere, Legal Secretary, will transfer from Group B to Group C, effective August 31. ■

July 1998
Jury and Bench Trials

Group A

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/16-617	Klepper	Sheldon	Freeman	CR 97-12217 PODD/F4; PODP/F6	Not Guilty	Jury
7/1-7/8	Bond/ Yarbrough	Jarrett	Hudson/ Johnson	CR 97-04387 6 Cts. Agg. Assault/F2 DCAC	Guilty on Ct. I of Lesser Included Disorderly Conduct/F6D Not Guilty Cts. II-V	Jury
7/8-7/10	Passon/ Brazinskas	Hyatt	Sobalvarro	CR 97-12564 Forgery/F4	Dismissed w/prejudice after jury empaneled	Jury
7/14-7/15	Valverde	Padish	Eckhart	CR 98-02829 Agg. DUI/F4	Guilty of Lesser Included Driving on Suspended License, M1	Jury
7/21-7/23	Green/ Brazinskas	Schwartz	Patchett	CR 98-01885 Misd. DUI; Unlawful Flight/F5	Guilty of DUI Not Guilty of Unlawful Flight	Jury
7/21-7/24	Howe	Dunevant	Freeman	CR 97-14268 Agg. Assault, Dang./F3 Assault/M1	Directed Verdict-Assault Not Guilty of Agg. Assault Guilty of Lesser Included Disorderly Conduct, Dang.	Jury
7/27-7/29	Tosto	Jarrett	Mitchell	CR 97-12962 Indecent Exposure/F6 Child Molestation/F2DCAC Predicate prior for Child Molest	Pled to lifetime probation with release and no further jail on day 3.5 of trial	Jury
7/28-7/28	Klepper	Skelly	Kramer	CR 98-05106 PODD/F4 PODP/F6 with 1 prior and on probation	Not Guilty on PODD Guilty on PODP	Jury

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GROUP B

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/30-7/2	Wuebbels/ Erb	Davidon	Hutt	CR 97-07906 1Ct. Trans.Herion for sale/F2 2 Ct. Offer to sell Herion/F2	Not Guilty	Jury
6/30-7/6	Doerfler/ Kasieta	Wilkinson	LeMense	CR 98-00193 Theft/F4	Not Guilty	Jury
6/30-7/8	F. Gray/ Castro	Schneider	Frick	CR 97-08195 1 Ct. Agg. Assault/F3 3 Cts. Endangerment/F6	Not Guilty on all 4 counts.	Jury
7/1-7/1	Bublik	Hotham	Rahi-Loo	CR 97-14969 Poss. of Marijuana/F6 Poss. of Drug Paraphernalia/F6	Guilty of two Class 6 opens.	Bench
7/2-7/6	Taradash/ King	Bolton	Reckart	CR 97-10292 Sexual Assault/F2 Kidnaping/F2 Aggravated Assault/F3D	Dismissed with prejudice after opening statements.	Jury
7/9-7/14	Washington	O'Toole	Newell	CR 98-03341 Agg. DUI/F4	Guilty	Jury
7/13-7/15	L. Brown	Hotham	Mitchell	CR 97-04514 Ct. 1 Sexual Conduct w/Minor/F2DCAC Cts. 2-10 Sexual Conduct w/Minor/F6	Mistrial; dismissed with prejudice.	Jury
7/15-7/21	Washington	O'Toole	Kalish	CR 98-04402 Agg. Assault/F5	Guilty	Jury
7/15-7/17	Burns/ Erb	Gottsfield	Dion	CR 97-04220 Theft of a Vehicle/F4	Not Guilty	Jury
7/21-7/23	Landry/ Erb	Gottsfield	Rahi-Loo	CR 98-03422 Attempted Armed Robbery/F3ND (threatened use) w/6 priors while on probation	Not Guilty	Jury
7/28-7/29	LeMoine/ Corbett	Schwartz	Schesnol	CR 97-14173 2 Cts. Assault w/Bodily Fluid (saliva)/F6 w/1 prior	Guilty on both counts.	Jury
7/29-7/31	Whelihan/ Erb	Martin	Boyle	CR 97-14260 Flight from Law Enforcement Vehicle/F6 Resisting Arrest/F6 Driving on a Suspended License/M1	Not Guilty of Flight and Resisting Arrest; Guilty of Driving on a Suspended License (Stipulated)	Jury

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Group C

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty / guilty	Bench or Jury Trial
6/29-7/2	Bingham/ Lincoln	Barker	Perrin	CR98-90979 Theft/F3 Burglary/F4	Not Guilty	Jury
7/6-7/6	Nermyr	Scott	Maxwell	CR97-94593 Agg Dr w. > .10 BAC/F4 Agg DUI/F4	Mistrial	Jury
7/8-7/10	Nermyr	Scott	Maxwell	CR97-94593 Agg Dr w. > .10 BAC/F4 Agg DUI/F4	Guilty	Jury
7/8-7/10	Mackey	Kamin	Fuller	CR98-90915 Att/Comm Arm Robbery/F3 Agg Asult/F3	Guilty	Jury
7/8-7/9	Carty/ Moller	Schwartz	Lundin	CR98-90122 POM/F6 PODP/F6	Not Guilty	Jury
7/14-7/14	Nermyr	Barker	Fuller	CR98-90116 Burglary 3 °/F4	Not Guilty	Jury
7/14-7/22	Levenson/ Beatty	Gerst	McCaully	CR97-94235 2 Cts. Agg Aslt/F3	Not Guilty	Jury
7/20-7/21	DuBiel/ Beatty	Aceto	Fuller	CR98-91671 Forgery/F4	Guilty	Jury
7/20-7/22	Schmich	Schneider	Lundin	CR98-91066 Trespass/F6	Guilty	Jury
7/22-7/28	Mackey	Aceto	Fuller	CR96-94749 Impt/Transp ND/F2 Miscond Inv weapons/F4	Guilty	Jury

(cont. on pg. 18) ☞

Group D

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
7/1-7/9	Claussen	Dunevant	Davis	CR97-06495 Resisting Arrest/F6 Felony Flight/F5	Guilty of Resisting Arrest Felony Flight Dismissed w/prej.	Jury
7/6-7/10	Willmott & Zelms	Katz	Wendell	CR98-00922 1Ct. Misconduct Inv. Wpns/F4; PODP/F4; G/T Vehicle/F3	Guilty all Counts	Jury
7/7-7/9	Wilson	Gerst	Hauert	CR 98-00875 Poss. of Narcotic Drug for Sale (over threshold amt)/F2	Guilty of Lesser-Included Offense - POND	Jury
7/9-7/9	Billar	D'Angelo	Meyers	CR 97-06230 2 Cts. Attempted Murder or in the Alternative 2 Cts. Aggravated Assault/F3D	Guilty of Aggravated Assault	Bench Trial
7/16-7/17	Stazzone	Wilkinson	Wendell	CR97-14647 Theft/F3 Unlawful Flight/F5	Guilty	Bench Trial
7/21-7/22	Hoff	Gerst	Ainley	CR 98-04734 Poss. Crack Cocaine/ F4 Poss Drug Paraphernalia/F6	Guilty of Possession of Crack Not Guilty of Possession of Drug Paraphernalia	Jury
7/21-7/22	Beckman/ Crews	Katz	Hammond	CR 98-05452 Agg. Assault/F5	Mistrial	Jury
7/22-7/27	Schaffer	Gerst	Bustamante	CR 97-12292, 97-14060 Burglary/ F3 Theft/F3 Flight/ F5	Guilty all counts	Jury

(cont. on pg. 19) ☞

DUI Unit

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
7/2-7/8	Wray	Baca	Gaertner	CR97-014349 2 Cts. Agg DUI/ F4	Guilty	Jury
7/7-7/9	Timmer	Dougherty	Morrison	CR97-14784 1 Cts. Agg DUI/ F4	Guilty	Jury
7/27-7/29	Timmer	Hyatt	Lockhardt	CR97-14472 1 Ct. Grand Theft-Vehicle/ F3	Guilty	Jury

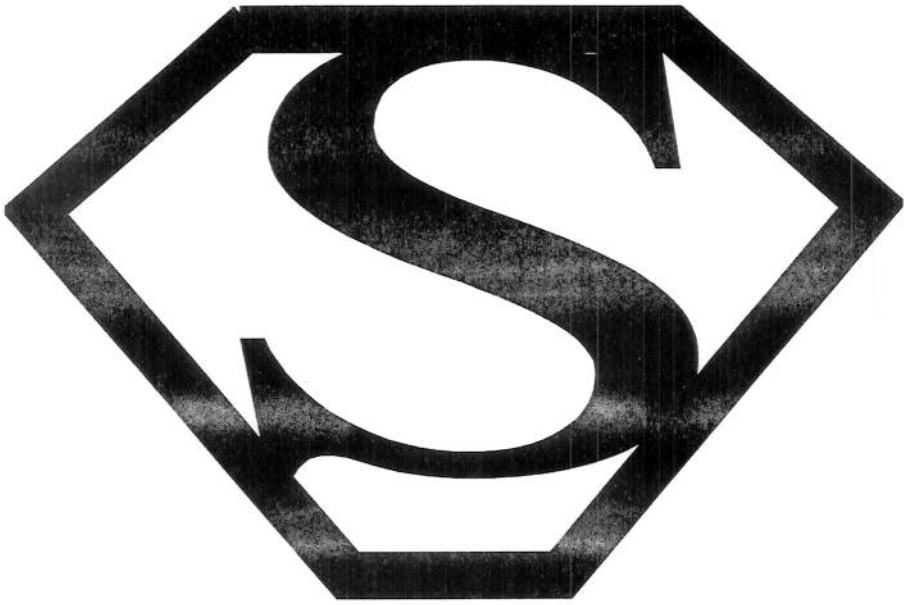
Major Felony Unit

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
7/13-7/22	Ronan & Carty/ Lincoln	Keppel	Levy	CR 97-94189 Attempt.Comm Murder/ F2 Sexual Assalut/ F2 1° Burglary/ F2 Kidnap/ F4 Agg. Assault/ F3	Guilty	Jury

Office of the Legal Defender

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty / guilty	Bench or Jury Trial
7/6-7/8	Tate	Dougherty	Daiza	CR 97-11491 Agg.Assault/F6	Guilty	Jury
7/8-7/15	Edwards/ Krone	Jarrett	Gadow	CR97-00237 (B) Agg.Assault/F3D	Not Guilty	Jury
7/14-7/24	Baeurle/ Pangburn	Hutt	Kuffner	CR 97-10364 Ct.1: Armed Robbery/F2D Ct.2: Att.Armed Robbery/F2D Ct.3: Miscond.Weapons/F4 Ct.4: PODP/F6	Guilty	Jury

It's a Bird! It's a Plane!
No! It's a . . .



Super Search & Seizure Seminar!

Friday, October 16, 1998
Holiday Inn Express

1600 S. Country Club Drive
Mesa, AZ

INSIDE ADDITION

The Insider's Monthly August 1998

TRAINING NEWS

With cooler weather approaching (we hope), the start of a new school year begins. If you're completing your degree, changing career directions or just looking for personal enrichment, there are many opportunities available. When taking classes this fall, be sure and apply for tuition reimbursement upon registration. It is too late in the process to apply for reimbursement after you have finished the class. Last year, $450,000 were provided for tuition reimbursement. This year, $750,00 has been budgeted. If you would like more information or a request form, please contact Lisa Kula, Training Administrator.

Mesa Community College is once again offering classes from its Court Site Series. *Courts in Arizona* and *Judicial Ethics* will be held in the superior court building. Classes meet on Tuesdays and Thursdays from 12:00 - 1:00 pm. Tuition is $38 plus a $5 registration fee. Please call Mesa Community College at 461-7700 to register.

Maricopa County Library District's resources are now available on the World Wide Web. Theses include:

- Library District Catalog
- Arizona newspapers - Phoenix, Tucson, Flagstaff (1-3 year backfiles)
- General Periodical Index
- General Business File
- Health Reference Center
- Subject guide to over 2,000 recommended Internet resources

These resources are available from your desk if you are on the county network. These resources offer annotated articles and full text. Remote access from home is available to the library catalog, magazine indexes and the Internet subject guide. Remote (home) users can access magazine indexes if they have a library card. You can also renew or reserve books through this Internet site. To access these resources visit mcld.maricopa.gov. ■

COMMUNITY BOARD

The 1998 United Way campaign is underway! Once again the office will be offering tee shirts with a public defender logo for sale. This year you can choose from a round neck tee, 3 button Henley, or 3 button collarless softball shirt. Prices range from $15 to $20 depending on style and size. In approximately two weeks, there will be samples of the shirts in the lobby of the 10th floor if you would like to see the colors and styles before making your purchase. Judi Wheeler will be sending order forms to all employees via email. In addition to the shirts, pens and thermal coffee mugs are another option to consider when supporting this worthy cause. Remember, all proceeds go to the United Way campaign. Winners of the raffle tickets were:

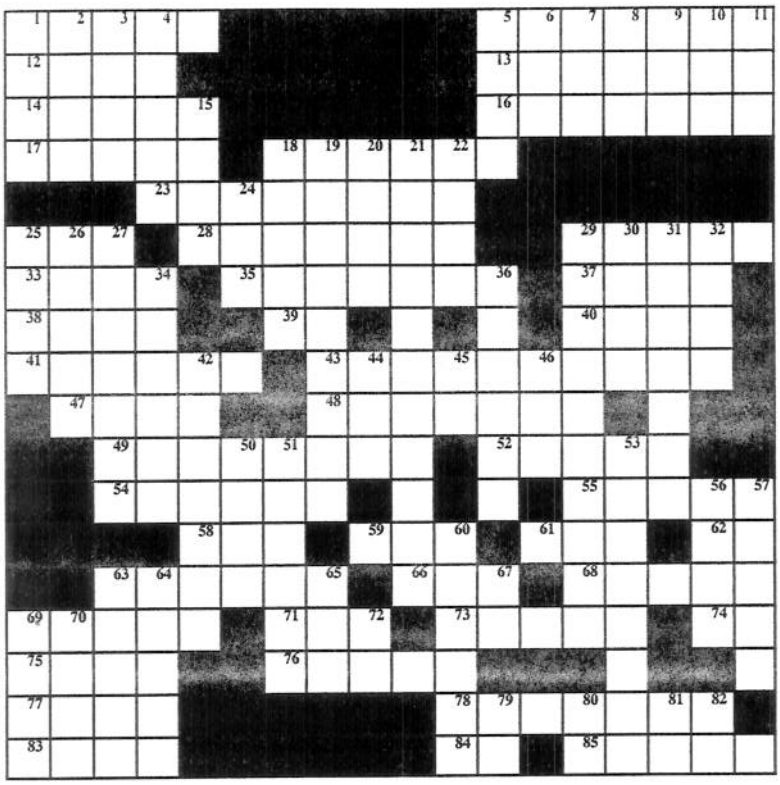
Tim Bein	Mercury tickets
Mercy Tellez	Diamondback's
Kiera Lebet	Rattler's

If you have any questions, please contact one of the committee members: Tim Bein, Ellen Hudak, Jeanne Hyler or Judi Wheeler. ■

THE LIGHTER SIDE

A builder, an electrician, and a lawyer were arguing about which profession was the oldest. The builder pointed out proudly that the first thing God had done was to build the earth. "True," said the electrician, "but before that, He said"Let there be light.'" "You're both right," said the lawyer agreeably, "but before the light there was chaos - and who do you think created the chaos?"

August Puzzle .. *Hotter than July !*



Across

1. Shore
5. City east of Tempe
12. Pledge
13. Spun Around
14. Performer
16. Meadows or Braun
17. Herb
18. Sickness
23. Utopia
25. Permit
28. August swoon
29. Unreactive
33. Lend me your
35. Chaos
37. Charles or Greer
38. Quickly
39. Opposite of NW
40. Active one
41. Skip
43. Gulf, river or seaway
47. Allow use of
48. Related to temblors
49. Attorney supporter?
52. Obey or follow
54. Killed
55. Edges
58. Cleaning cloth
59. Clever talent
61. By way of
62. 2 letters for Court
63. Renal gland
66. Also
68. Mutual of
69. Diving birds
71. Cyber web ?
73. German River
74. Switch position
75. _____ For All Seasons
76. Mark of Group B
77. Liver fluid
78. In place of
83. Movie lead
84. __ re.. mi...
85. Chocolate sandwich cookie

Down

1. Watercraft
2. Per
3. Short for Lawyer
4. Gator bite?
5. Frances of Group B
6. Debt letters
7. Br. corp. letters
8. Law Clerk hurdle
9. Summer in Paris
10. Spanish for king
11. Football stats
15. Peruse
18. Wisemen
19. Called by name
20. Neeson of film
21. Shakespeare comedy
22. Lucy's man
24. Decompose
25. Shakespeare king
26. Artists stand
27. *Gulliver's*
29. Wishy washy
30. Lunch time
31. Built
32. Uncommon
34. Of the backbone
36. Sheriff
42. McGee and Yue
44. Short terminal ?
45. *My life as a*
46. Make fun of
50. Greenish blue
51. Myth
53. Circle divider
56. Reverberate
57. Unseat yourself
60. Too hot
63. Aussie bear ?
64. Tube or ear
65. Evergreen
67. I see !
69. Chem rooms
70. Miss
72. Baseball's Cobb
79. Yes or ___
80. Basketball stat
81. Cable network
82. Initial Duty Officer

last month's answers can be found on s:/pd-info/puzzle

- Created by Gene Parker